

Remarks

Applicant thanks the Examiner for her careful review of the application.

Applicant notes that claims 9, 13, 14, 20, and 24-26 have been identified as being allowable, but for their dependence from a rejected base claim. Applicant thanks the Examiner.

Allowability of Independent Claims 11, 16, 18, and 21

Independent claims 11, 16, 18, and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by Williams Sound. Applicant respectfully traverses this rejection.

Two Office Actions have been issued during the prosecution of this application: (1) an Office Action mailed on November 21, 2002 ("the initial Office Action"); and (2) an Office Action mailed on December 5, 2003 ("the present Office Action").

The initial Office Action rejected independent claims 11, 16, 18, and 21 on the grounds that Williams Sound anticipated them. In response, Applicant argued that Williams Sound fails to anticipate these claims, because Williams Sound does not disclose a "transmission protocol uniquely associated with a particular event," as required by these claims. Now, in the present Office Action, it is asserted that this seemingly missing element is taught inherently. ("Again, Williams Sound indicates the capability of function on multiple frequency channels in events which are held at various public environments, which provides inherent support of uniquely associated transmission protocol with a particular event, as indicated in respect to independent claims 11, 16, and 21.") See The Present Office Action, p. 8.

Applicant respectfully points out that for an element to be taught inherently by a reference, that element must of necessity be present in the reference. It is not enough that the reference contains teachings that are consistent with the idea that the element may be present in the reference. Simply put, for an element to be inherently disclosed by a reference, the reference must contain teachings from which it is an absolute inevitability that the missing element be present. See MPEP §2112 ("The fact that a certain result or characteristic may occur or be present in the prior is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing

described in the reference, and that it would be so recognized by persons of ordinary skill.") (internal citations omitted) (emphasis added). Thus, for Williams Sound to inherently disclose the feature of a "transmission protocol uniquely associated with a particular event," Williams Sound must contain a set of teachings from which one can conclude that such a feature is *necessarily* present in the system of Williams Sound.

Williams Sound does not contain teachings from which one can conclude that the system described therein *necessarily* possesses the feature of a "transmission protocol uniquely associated with a particular event." As stated by the present Office Action, Williams Sound contains teachings regarding "the capability of [the system to] function on multiple frequency channels in events which are held at various public environments." At best, one could conclude (with the aid of hindsight) that the system of Williams Sound *could* uniquely associate a transmission protocol with a particular event. Of course, the system of Williams Sound could also be operated so as to use the same frequency channels from event to event, in which case the transmission protocol is most definitely *not* uniquely associated with a particular event. In short, the teachings of Williams Sound do not lead one to a conclusion that the system taught therein *necessarily* includes the feature of a "transmission protocol uniquely associated with a particular event." The system of Williams Sound might or might not uniquely associate transmission protocols and events. As discussed above, this is not sufficient to support a finding that Williams Sound inherently discloses that feature.

Because Williams Sound fails to inherently disclose a "transmission protocol uniquely associated with a particular event," Williams Sound cannot properly serve as a basis for a rejection of independent claims 11, 16, 18, and 21. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims.

Allowability of Claims 12, 17, 19, 22, and 23

The rejection of dependent claims 12, 17, 19, 22, and 23 rests upon the premise that the independent claims from which these claims depend are anticipated by Williams Sound. As discussed above, this premise is false. Accordingly, these claims should be allowed for at least the same reasons that their respective independent claims should be

allowed. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims.

Allowability of Independent Claim 1

Independent claim 1 is rejected under 35 U.S.C. §102(e) as being anticipated by Ogden. Applicants respectfully traverse this rejection.

Again, the present Office Action relies upon the theory of inherency in the formulation of the rejection of independent claim 1. Specifically, independent claim 1 requires "providing an earpiece, in exchange for money, to at least one of said plurality of individuals within said fixed space." Although Ogden teaches that the system disclosed therein may be sold, it does not provide any teaching with respect *to whom* the system might be sold. Notably, claim 1 requires that the earpieces be sold to an individual within the fixed space.

According to the Office Action, because Ogden indicates that the system can be sold, Ogden inherently discloses that the earpieces can be sold to individuals within the fixed space. This is not true. Based on the teachings in Ogden it is possible that the system is sold to parties outside the fixed space. It is not necessary, based upon Ogden, that earpieces be sold to individuals within the fixed space. Thus, Ogden does not inherently teach "providing an earpiece, in exchange for money, to at least one of said plurality of individuals within said fixed space." In fact, this business method is not even suggested by Ogden. Rather, the passage cited in Ogden appears to be directed toward a discussion of selling the entire system disclosed therein (i.e., transmitter and receivers)—not sales of earpieces to those in attendance at an event. In any event, because it does not necessarily follow that the receivers taught by Ogden must be sold to "individuals within the fixed space," as required by claim 1, Ogden cannot serve as a proper basis for a rejection of independent claim 1 under 35 U.S.C. §102(e). Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims.

Allowability of Claims 2-8 and 10

The rejection of dependent claims 2-8 and 10 rests upon the premise that independent claim 1 is anticipated by Ogden. As discussed above, this premise is false.

Accordingly, these claims should be allowed for at least the same reasons that independent claim 1 should be allowed. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of these claims.

Allowability of Claim 15

Claim 15 was rejected under 35 U.S.C. §112 for being indefinite. According to the present Office Action, it was unclear whether the first and second locations are within the same area of fixed space. Claim 15 has been amended to make clear that the first and second locations are within the same area of fixed space. Applicants respectfully requests withdrawal of this rejection.

Conclusion

Claims 1-26 remain pending in the application. These claims are believed to be allowable for the reasons set forth above. This amendment is believed to be responsive to all points raised in the Office Action. Accordingly, Applicants respectfully request prompt reconsideration, allowance, and passage of the application to issue. Should the Examiner have any remaining questions or concerns, the Examiner is urged to contact the undersigned by telephone at the number below to expeditiously resolve such concerns.

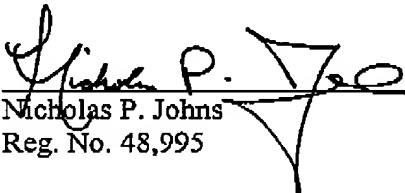
Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: 5 March 2004

23552

PATENT TRADEMARK OFFICE



Nicholas P. Johns
Reg. No. 48,995